UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,766	01/03/2007	Jun Kitakado	065933-0270	6931

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EXAMINER
SARWAR, BABAR

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/577,766	KITAKADO, JUN
Office Action Summary	Examiner	Art Unit	
	BABAR SARWAR	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>03</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *16 April 2009*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *10-19,22 and 23* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *10-19, 22-23* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to **claims10-19, 22-23** have been considered

but are moot in view of the new ground(s) of rejection.

2.   **Claims 1-9, 20-21** have been cancelled.

3.   **Claims 10-16** have been amended.

4.   **Claims 10-19, 22-23** are currently pending.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

   Claims 10-19, 22-23 are rejected under 35 U.S.C. 103(a) as being

unpatentable Awad et al. (US 2004/0022177 A1) in view of Tiedemann et al. (US

2007/0206623 A1), hereinafter referenced as Tied.

       Consider **claims 10, 16, and 22-23,** Awad discloses method for determining a

transmission rate **(Abstract, where Awad discloses an adaptive modulation and**

coding method), comprising: communicating with a predetermined terminal apparatus

at a variable transmission rate **(Fig.1, where Awad discloses User Equipments in**

communication with the base station); performing a processing of varying a

transmission rate of an uplink or downlink according to a channel quality of the terminal

apparatus **(Para 0048, Fig. 4, where Awad discloses MCS levels in accordance with**

the variation of the channel conditions); detecting information on one of the uplink and downlink set to be prioritized, from signals received from the terminal apparatus; and referring to the information thus detected **(Para 0073, Fig. 8, where User equipment measures downlink channel quality, therefore detecting information on one of the uplink and downlink set to be prioritized)**. Awad does not explicitly disclose that stopping the processing of varying the transmission rate and maintaining the transmission rate if the one of the uplink and downlink set to be prioritized is different from the uplink or downlink subject to variation of the transmission rate, wherein the transmission rate varying stops data communication in the uplink and downlink in order to execute the processing of varying the transmission rate. Tied discloses that stopping the processing of varying the transmission rate **(Para 0144, Fig. 8, where Tied discloses implementing a transmit rate hold, therefore stopping the processing of varying the transmission rate)** and maintaining the transmission rate if the one of the uplink and downlink set to be prioritized is different from the uplink or downlink subject to variation of the transmission rate **(Para 0144, Fig. 8, elements 850, 860, where Tied discloses maintaining the transmission rate)**, wherein the transmission rate varying stops data communication in the uplink and downlink in order to execute the processing of varying the transmission rate **(Para 0144, 0146, Fig. 8, where Tied discloses if rate control, and stoppage of the modulation process are desired, therefore stopping data communication in the uplink and downlink in order to execute the processing of varying the transmission rate)**.

Therefore it would have been obvious to one of ordinary skills in the art at the

time the invention was made to modify Awad with the teachings of Tied so as to implement the ability to adjust transmission rates as necessary as discussed in **Para 0012**.

Consider **claims 11, 12,** Awad discloses a base station, comprising: a communication unit apparatus **(Para 0048, Fig. 8, where Awad discloses a selection unit performing modulation and coding levels)** which communicates with a predetermined terminal apparatus at a variable transmission rate apparatus **(Para 0047, Fig. 8, where Awad discloses a selection unit performing modulation and coding levels)**; a transmission rate varying unit which measures a quality of a channel for the terminal apparatus and performs a processing of varying a transmission rate of an uplink according to the quality **(Para 0048, where Awad discloses MCS levels in accordance with the variation of the channel conditions)**; a detector which detects information on whether the downlink is set to be prioritized, from signals received from the terminal apparatus **(Para 0073, Fig. 8, where User equipment measures downlink channel quality, therefore detecting information on whether the downlink is set to be prioritized)**. Awad does not explicitly disclose that the processing involving the stoppage of data communication in an uplink and downlink; and a communication control unit which stops the processing of varying the transmission rate in the uplink and maintains the transmission rate of the uplink if the downlink priority is set to be prioritized. Tied discloses that the processing involving the stoppage of data communication in an uplink and downlink **(Para 0144, 0146, Fig. 8, where Tied discloses if rate control is desired, and stoppage of the modulation**

process, therefore stoppage of data communication in an uplink and downlink);
and a communication control unit which stops the processing of varying the
transmission rate in the uplink and maintains the transmission rate of the uplink if the
downlink priority is set to be prioritized **(Para 0144, Fig. 8, elements 850, 860, where
Tied discloses maintaining the transmission rate)**.

Consider **claim 13,** the combination teaches everything claimed as implemented
above (see claims 10). In addition, Awad discloses that a signal monitoring unit which
monitors a type or amount of signals transmitted from and received by said
communication unit **(Para 0048, where Awad discloses the report receiving unit
receiving signal transmission quality from the User equipment)**, wherein said
communication control unit does not stop the varying processing in said transmission
rate varying unit, according to the type or amount of signals of a line which is required to
be prioritized by the information priority detected by the detector **(Para 0048, where
Awad discloses a selection unit performing modulation and coding levels based
upon comparison between transmission quality and threshold values)**.

Claim 14, as analyzed with respect to limitations discussed in claim 13.

Claim 15, as analyzed with respect to limitations discussed in claim 13.

Consider **claim 17,** the combination teaches everything claimed as implemented
above (see claims 16). In addition, Awad discloses that wherein if the downlink is
determined to be prioritized, said communication control unit disregards an instruction,
issued from the base station apparatus, about a change in an uplink transmission rate
and if the uplink is determined to be prioritized, it does not request the base station

apparatus to vary the transmission rate, regardless of a channel quality of the downlink **(Para 0047-0048, Figs. 4, 8, where Awad discloses MCS levels and threshold values and selection units performing comparison between transmission quality and threshold values)**.

Consider **claim 18,** the combination teaches everything claimed as implemented above (see claims 16). In addition, Awad discloses a signal generator which generates a request signal, as information on the degree of priority of a line, for a line to which priority is to be given and which sends the generated request signal to the base station apparatus **Para 0047-0048, Figs. 4, 8, where Awad discloses MCS levels and threshold values and selection units performing comparison between transmission quality and threshold values)**.

Claim 19, as analyzed with respect to limitations discussed in claim 18.

Conclusion

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to BABAR SARWAR whose telephone number is

(571)270-5584. The examiner can normally be reached on MONDAY TO FRIDAY

09:00 A.M -05:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, NICK CORSARO can be reached on (571)272-7876. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BS/   /BABAR SARWAR/
                                                          Examiner, Art Unit 2617

/NICK CORSARO/
Supervisory Patent Examiner, Art Unit 2617